

**SHB 1745** - H AMD TO H AMD (H-2238.1/15) **166**

By Representative Manweller

**NOT ADOPTED 03/05/2015**

1 One page 1 of the striking amendment, strike all material after  
2 line 2 and insert the following:

3

4 "NEW SECTION. **Sec. 1.** This act may be known and cited as the  
5 Washington voting rights act of 2015.

6

7 NEW SECTION. **Sec. 2.** The definitions in this section apply  
8 throughout this chapter unless the context clearly requires  
9 otherwise. In applying these definitions and other terms in this  
10 chapter, courts may rely on relevant federal case law for guidance.

11 (1) "At-large method of election" means any of the following  
12 methods of electing members of the governing body of a political  
13 subdivision:

14 (a) One in which the voters of the entire jurisdiction elect the  
15 members to the governing body;

16 (b) One in which the candidates are required to reside within  
17 given areas of the jurisdiction and the voters of the entire  
18 jurisdiction elect the members to the governing body; or

19 (c) One that combines the criteria in (a) and (b) of this  
20 subsection.

21 (2) "District-based elections" means a method of electing  
22 members to the governing body of a political subdivision in which  
23 the candidate must reside within an election district that is a  
24 divisible part of the political subdivision and is elected only by  
25 voters residing within that election district.

26 (3) "Polarized voting" means voting in which there is a  
27 difference in the choice of candidates or other electoral choices

1 that are preferred by voters in a protected class, and in the choice  
2 of candidates and electoral choices that are preferred by voters in  
3 the rest of the electorate.

4 (4) "Political subdivision" means any county, city, town, or  
5 school district, but does not include the state.

6 (5) "Protected class" means a class of voters who are members of  
7 a race, color, or language minority group.

8

9 NEW SECTION. **Sec. 3.** (1) A political subdivision is in  
10 violation of this section when it is shown that:

11 (a) Based on a totality of the circumstance, elections in the  
12 political subdivision exhibit polarized voting; and

13 (b) Members of a protected class do not have an equal  
14 opportunity to elect candidates of their choice or an equal  
15 opportunity to influence the outcome of an election.

16 (2) In determining whether there is polarized voting under this  
17 section, the court shall analyze elections of the governing body of  
18 the political subdivision and elections in which at least five  
19 candidates are members of a protected class. Only elections  
20 conducted prior to the filing of an action pursuant to this chapter  
21 shall be used to establish or rebut the existence of polarized  
22 voting.

23 (3) A political subdivision has an absolute defense from  
24 liability, and a finding of polarized voting is precluded, if the  
25 proportion of elected officials serving on the political  
26 subdivision's legislative body who are members of the protected  
27 class is statistically equivalent to, or greater than, the  
28 proportion of the voting age population who are members of the  
29 protected class.

30 (4) No voting qualification or prerequisite to voting, or  
31 standard, practice, or procedure, may be imposed or applied by any  
32 political subdivision to deny or abridge the right to vote because  
33 they are a member of a race, color, or language minority group.

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1        NEW SECTION.    **Sec. 4.**    (1) In an action filed pursuant to this  
2 section, the trial court shall set a trial to be held no later than  
3 one year after the filing of a complaint, and shall set a discovery  
4 and motions calendar accordingly.

5        (2) Proof of intent on the part of the voters or elected  
6 officials to discriminate against a protected class is not required  
7 for a cause of action to be sustained.

8        (3) For purposes of any applicable statute of limitations, a  
9 cause of action under this section arises every time there is an  
10 election pursuant to an at-large method of election.

11       (4) The plaintiff's constitutional right to the secrecy of the  
12 plaintiff's vote is preserved and is not waived by the filing of an  
13 action pursuant to this section, and is not subject to discovery or  
14 disclosure.

15       (5) In seeking a temporary restraining order or a preliminary  
16 injunction, a plaintiff shall not be required to post a bond or any  
17 other security in order to secure such equitable relief.

18       (6) No action may be filed pursuant to this act before January  
19 15, 2016. No action may be filed against a political subdivision  
20 within four years of an action filed against that subdivision under  
21 the federal voting rights act.

22  
23       NEW SECTION.    **Sec. 5.**    (1) A political subdivision that conducts  
24 an election pursuant to state, county, or local law, is authorized  
25 to change its electoral system including, but not limited to,  
26 implementing a district-based election system to remedy a potential  
27 violation of section 3 of this act. If a political subdivision  
28 invokes its authority under this section to implement a district-  
29 based election system, the districts shall be drawn in a manner  
30 consistent with section 6 of this act.

31       (2) If a political subdivision implements a district-based  
32 election system, the plan shall be consistent with the following  
33 criteria:

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1 (a) Each district shall be as reasonably equal in population as  
2 possible to each and every other such district comprising the  
3 political subdivision.

4 (b) Each district shall be reasonably compact.

5 (c) Each district shall consist of geographically contiguous  
6 area.

7 (d) To the extent feasible, the district boundaries shall  
8 coincide with existing recognized natural boundaries and shall, to  
9 the extent possible, preserve existing communities of related and  
10 mutual interest.

11 (e) District boundaries may not be drawn or maintained in a  
12 manner that denies any person an equal opportunity to elect  
13 candidates of his or her choice or an equal opportunity to influence  
14 the outcome of an election.

15 (3) During the adoption of its plan, the political subdivision  
16 shall ensure that full and reasonable public notice of its actions  
17 is provided. The political subdivision shall hold at least one  
18 public hearing on the redistricting plan at least one week before  
19 adoption of the plan.

20 (4)(a) If the political subdivision invokes its authority under  
21 this section and the plan is adopted during the period of time  
22 between the first Tuesday after the first Monday of November and on  
23 or before January 15th of the following year, the political  
24 subdivision shall order new elections to occur at the next  
25 succeeding general election.

26 (b) If the political subdivision invokes its authority under  
27 this section and the plan is adopted during the period of time  
28 between January 16th and on or before the first Monday of November,  
29 the next election will occur as scheduled and organized under the  
30 current electoral system, but the political subdivision shall order  
31 new elections to occur pursuant to the remedy at the general  
32 election the following calendar year.

33 (c) All of the positions that were elected pursuant to the  
34 previous electoral system may continue their term of office.

1 (5) Within forty-five days after receipt of federal decennial  
2 census information applicable to a specific local area, the  
3 commission established in RCW 44.05.030 shall forward the census  
4 information to each political subdivision that has invoked its  
5 authority under this section to implement a district-based election  
6 system, or that is charged with redistricting under section 6 of  
7 this act.

8 (6) No later than eight months after its receipt of federal  
9 decennial census data, the governing body of the political  
10 subdivision that had previously invoked its authority under this  
11 section to implement a district-based election system, or that was  
12 previously charged with redistricting under section 4 of this act,  
13 shall prepare a plan for redistricting its districts, pursuant to  
14 RCW 29A.76.010, and in a manner consistent with this act.

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16 NEW SECTION. **Sec. 6.** (1) Upon a finding of a violation of  
17 section 3 of this act, the court shall order appropriate remedies  
18 that are tailored to remedy the violation. The remedies may include,  
19 but are not limited to, the imposition of a district-based election  
20 system. The court may order the affected jurisdiction to draw or  
21 redraw district boundaries or appoint an individual or panel to draw  
22 or redraw district lines. The proposed districts must be approved by  
23 the court prior to their implementation.

24 (2) Implementation of a district-based remedy, pursuant to  
25 section 4 of this act, is not precluded by the fact that members of  
26 a protected class do not constitute a numerical majority within a  
27 proposed district-based election district. If, in tailoring a  
28 remedy, the court orders the implementation of a district-based  
29 election district where the members of the protected class are not a  
30 numerical majority, the court shall do so in a manner that provides  
31 the protected class an equal opportunity to elect candidates of  
32 their choice or an equal opportunity to influence the outcome of an  
33 election.

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1        NEW SECTION.    **Sec. 7.** (1) In any action to enforce this  
2 chapter, the court may allow the prevailing plaintiff or plaintiffs,  
3 other than the state or political subdivision thereof, reasonable  
4 attorneys' fees, all nonattorney fee costs as defined by RCW  
5 4.84.010, and all reasonable expert witness fees. However, the court  
6 may elect not to allow the award of attorneys' fees, costs, or  
7 expert witness fees under this section or may elect to reduce the  
8 amount of fees and costs awarded when, in the court's determination:

9        (a) The award would create undue hardship to the political  
10 subdivision; and

11        (b) The award would directly impact the ability of the political  
12 subdivision to provide services to low-income protected class  
13 members within the political subdivision.

14        (2) Prevailing defendants may recover an award of fees or costs  
15 pursuant to RCW 4.84.185.

16        (3) No fees or costs may be awarded if no action is filed.

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18        NEW SECTION.    **Sec. 8.** Any voter who is a member of a protected  
19 class and who resides in a political subdivision where a violation  
20 of section 3 of this act is alleged may file an action in the  
21 superior court of the county in which the political subdivision is  
22 located. If the action is against a county, the action may be filed  
23 in the superior court of such county, or in the superior court of  
24 either of the two nearest judicial districts as determined pursuant  
25 to RCW 36.01.050(2). An action filed pursuant to this chapter does  
26 not need to be filed as a class action.

27

28        NEW SECTION.    **Sec. 9.** (1) Prior to filing an action pursuant to  
29 this act, a person shall first notify the political subdivision that  
30 he or she intends to challenge the political subdivision's electoral  
31 system under this act. If the political subdivision does not show  
32 any intent to invoke its authority under section 5 of this act to  
33 implement the person's proposed remedy within one hundred eighty

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1 days after receiving notice, any person may file an action under  
2 this act.

3 (2) The notice provided shall identify the person or persons who  
4 intend to file an action, and the protected class or classes whose  
5 members do not have an equal opportunity to elect candidates of  
6 their choice or an equal opportunity to influence the outcome of an  
7 election. The notice shall also include a reasonable analysis of the  
8 person's data concerning the alleged vote dilution and polarized  
9 voting, and a proposed remedy or remedies, based on that data, which  
10 would address the alleged violation of section 3 of this act.

11 (3) If, within one hundred eighty days after receiving a  
12 person's notice, a political subdivision receives another notice  
13 containing a materially different proposed remedy than the first  
14 notice, the political subdivision shall have an additional ninety  
15 days from the date of this subsequent notice before an action may be  
16 filed under this act.

17 (4) The political subdivision shall work in good faith with the  
18 person providing the notice to implement a remedy that provides the  
19 protected class or classes identified in the notice an equal  
20 opportunity to elect candidates of their choice or influence the  
21 outcome of an election.

22 (5) Should the political subdivision adopt the proposed remedy  
23 set forth in the notice, an action under this act by any party may  
24 not be brought against that political subdivision for four years;  
25 provided, however, that the political subdivision does not enact a  
26 change to or deviation from the remedy during this four-year period  
27 that would otherwise give rise to an action under this act.

28 (6) Should the political subdivision adopt a different remedy  
29 that takes the notice into account, the political subdivision may  
30 seek a court order acknowledging that the political subdivision's  
31 remedy complies with section 3 of this act. The person who submitted  
32 the notice may support or oppose such an order. If the court  
33 concludes that the political subdivision's remedy complies with  
34 section 3 of this act, an action under this act by any party may not

1 be brought against that political subdivision for four years;  
2 provided, however, that the political subdivision does not enact a  
3 change to or deviation from the remedy during this four-year period  
4 that would otherwise give rise to an action under this act.

5 (7) If a political subdivision has received two or more notices  
6 containing materially different proposed remedies, the political  
7 subdivision shall work in good faith with the persons to implement a  
8 remedy that provides the protected class or classes identified in  
9 the notices an equal opportunity to elect candidates of their choice  
10 or influence the outcome of an election. Should the political  
11 subdivision adopt one of the remedies offered, or a different remedy  
12 that takes multiple notices into account, the political subdivision  
13 may seek a court order acknowledging that the political  
14 subdivision's remedy complies with section 3 of this act. The  
15 persons who submitted notices may support or oppose such an order.  
16 If the court concludes that the political subdivision's remedy  
17 complies with section 3 of this act, an action under this act by any  
18 party may not be brought against that political subdivision for four  
19 years; provided, however, that the political subdivision does not  
20 enact a change to or deviation from the remedy during this four-year  
21 period that would otherwise give rise to an action under this act.

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23 NEW SECTION. **Sec. 10.** (1) If, after considering the person's  
24 notice, the political subdivision adopts a remedy, an action under  
25 this act by any person may not be brought against that political  
26 subdivision for four years; provided, however, that the political  
27 subdivision does not enact a change to or deviation from the remedy  
28 during this four-year period that would otherwise give rise to an  
29 action under this act. In agreeing to adopt the person's proposed  
30 remedy, the political subdivision may do so by stipulation, which  
31 shall become a public document.

32 (2) If, after an action is filed, the political subdivision  
33 adopts the person's proposed remedy or a court-ordered remedy, or  
34 another remedy that would satisfy the court, an action under this

1 act by any party may not be brought against that political  
2 subdivision for four years; provided, however, that the political  
3 subdivision does not enact a change to or deviation from the remedy  
4 during this four-year period that would otherwise give rise to an  
5 action under this act.

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7 NEW SECTION. **Sec. 11.** The provisions of this act are not  
8 applicable to cities and towns with populations under two thousand  
9 or to school districts with K-12 full-time equivalent enrollments of  
10 less than five hundred.

11  
12 NEW SECTION. **Sec. 12.** A new section is added to chapter  
13 28A.343 RCW to read as follows:

14 The school board of directors may authorize a change to a  
15 district-based election as defined in section 2(2) of this act, such  
16 districts to be drawn in a manner consistent with sections 5 and 6  
17 of this act. The school board of directors shall order new elections  
18 to be scheduled pursuant to section 5(4) of this act. The staggering  
19 of directors' terms shall be accomplished as provided in RCW  
20 28A.343.030 and 28A.343.620 through 28A.343.650.

21  
22 **Sec. 13.** RCW 36.32.020 and 1982 c 226 s 4 are each amended to  
23 read as follows:

24 The board of county commissioners of each county shall divide  
25 their county into three commissioner districts so that each district  
26 shall comprise as nearly as possible one-third of the population of  
27 the county: PROVIDED, That the territory comprised in any voting  
28 precincts of such districts shall remain compact, and shall not be  
29 divided by the lines of said districts.

30 However, the commissioners of any county composed entirely of  
31 islands and with a population of less than thirty-five thousand may  
32 divide their county into three commissioner districts without regard  
33 to population, except that if any single island is included in more  
34

1 than one district, the districts on such island shall comprise, as  
2 nearly as possible, equal populations.

3 Except where necessary to comply with a court order issued  
4 pursuant to sections 3 and 6 of this act, the lines of the districts  
5 shall not be changed (~~more often~~) more often than once in four years  
6 and only when a full board of commissioners is present. The  
7 districts shall be designated as districts numbered one, two and  
8 three.

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10 NEW SECTION. Sec. 14. A new section is added to chapter 35.21  
11 RCW to read as follows:

12 The legislative authority of a city or town may authorize a  
13 change to its electoral system, including the implementation of a  
14 district-based election system as defined in section 2(2) of this  
15 act, to remedy a potential violation of section 3 of this act. If  
16 the legislative authority of a city or town invokes its authority  
17 under this section to implement a district-based election system,  
18 the districts shall be drawn in a manner consistent with section 5  
19 of this act.

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21 NEW SECTION. Sec. 15. A new section is added to 35A.21 RCW to  
22 read as follows:

23 The legislative authority of a code city or town may authorize a  
24 change to its electoral system, including the implementation of a  
25 district-based election system as defined in section 2(2) of this  
26 act, to remedy a potential violation of section 3 of this act. If  
27 the legislative authority of a code city or town invokes its  
28 authority under this section to implement a district-based election  
29 system, the districts shall be drawn in a manner consistent with  
30 section 5 of this act.

31  
32 **Sec. 16.** RCW 29A.76.010 and 2011 c 349 s 26 are each amended to  
33 read as follows:

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1 (1) It is the responsibility of each county, municipal  
2 corporation, and special purpose district with a governing body  
3 comprised of internal director, council, or commissioner districts  
4 not based on statutorily required land ownership criteria to  
5 periodically redistrict its governmental unit, based on population  
6 information from the most recent federal decennial census.

7 (2) Within forty-five days after receipt of federal decennial  
8 census information applicable to a specific local area, the  
9 commission established in RCW 44.05.030 shall forward the census  
10 information to each municipal corporation, county, and district  
11 charged with redistricting under this section.

12 (3) No later than eight months after its receipt of federal  
13 decennial census data, the governing body of the municipal  
14 corporation, county, or district shall prepare a plan for  
15 redistricting its internal or director districts.

16 (4) The plan shall be consistent with the following criteria:

17 (a) Each internal director, council, or commissioner district  
18 shall be as nearly equal in population as possible to each and every  
19 other such district comprising the municipal corporation, county, or  
20 special purpose district.

21 (b) Each district shall be as compact as possible.

22 (c) Each district shall consist of geographically contiguous  
23 area.

24 (d) Population data may not be used for purposes of favoring or  
25 disfavoring any racial group or political party, except to the  
26 extent necessary to ensure compliance with this act.

27 (e) To the extent feasible and if not inconsistent with the  
28 basic enabling legislation for the municipal corporation, county, or  
29 district, the district boundaries shall coincide with existing  
30 recognized natural boundaries and shall, to the extent possible,  
31 preserve existing communities of related and mutual interest.

32 (5) During the adoption of its plan, the municipal corporation,  
33 county, or district shall ensure that full and reasonable public  
34 notice of its actions is provided. The municipal corporation,

1 county, or district shall hold at least one public hearing on the  
2 redistricting plan at least one week before adoption of the plan.

3 (6)(a) Any registered voter residing in an area affected by the  
4 redistricting plan may request review of the adopted local plan by  
5 the superior court of the county in which he or she resides, within  
6 fifteen days of the plan's adoption. Any request for review must  
7 specify the reason or reasons alleged why the local plan is not  
8 consistent with the applicable redistricting criteria. The municipal  
9 corporation, county, or district may be joined as respondent. The  
10 superior court shall thereupon review the challenged plan for  
11 compliance with the applicable redistricting criteria set out in  
12 subsection (4) of this section.

13 (b) If the superior court finds the plan to be consistent with  
14 the requirements of this section, the plan shall take effect  
15 immediately.

16 (c) If the superior court determines the plan does not meet the  
17 requirements of this section, in whole or in part, it shall remand  
18 the plan for further or corrective action within a specified and  
19 reasonable time period.

20 (d) If the superior court finds that any request for review is  
21 frivolous or has been filed solely for purposes of harassment or  
22 delay, it may impose appropriate sanctions on the party requesting  
23 review, including payment of attorneys' fees and costs to the  
24 respondent municipal corporation, county, or district.

25  
26 NEW SECTION. **Sec. 17.** This act supersedes other state laws and  
27 local ordinances to the extent that those state laws or ordinances  
28 would otherwise restrict a jurisdiction's ability to implement a  
29 remedy pursuant to this act.

30  
31 NEW SECTION. **Sec. 18.** If any provision of this act or its  
32 application to any person or circumstance is held invalid, the  
33 remainder of the act or the application of the provision to other  
34 persons or circumstances is not affected.

1        NEW SECTION.    **Sec. 19.**    Sections 1 through 11 this act  
2 constitute a new chapter in Title 29A RCW.

3

4        Correct the title."

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EFFECT: (1) Removes fire, port, and public utility districts from the political subdivisions covered under the act;  
(2) Excludes cities and towns under 2,000 people as well as school districts with less than 500 students from the act;  
(3) Removes language that a protected class need not be compact or concentrated in order for a court to find a violation;  
(4) Requires a court to analyze elections where five or more candidates are members of a protected class, instead of one candidate;  
(5) Provides that subdivisions have an affirmative defense to a claim of polarized voting where the proportion of elected members of its governing body who are members of a protected class is equal to or greater than the proportion of protected class adults in the population of the subdivision;  
(6) Removes language permitting members of different protected classes to jointly file a claim under the act;  
(7) Prohibits an action to be filed within four years of a lawsuit filed against a subdivision under the federal Voting Rights Act of 1965;  
(8) Removes the requirement that elected positions with two years remaining in their terms are subject to a new election ordered under the act;  
(9) Removes language instructing how courts should tailor remedies providing for new districts;  
(10) Permits courts to waive or reduce attorney's fees if such fees would create a hardship for a subdivision or impact its ability to provide services for low-income protected class members; and  
(11) Allows subdivisions to adopt a remedy, not limited to the proposed remedy included in the notice, in order to be covered under the four-year safe harbor provision.

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